UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY (NJ) INC. and TIFFANY AND COMPANY,

Plaintiffs,

v.

eBAY INC.,

Defendants.

Case No. 04 Civ. 4607 (KMK)

DECLARATION OF ERIK C. WALSH IN
OPPOSITION TO DEFENDANT'S MOTION *IN LIMINE*

I, Erik C. Walsh, declare as follows:

1. I am admitted to practice before the Courts of the State of New York, and am a member of this Court. I am associated with Arnold & Porter LLP, attorneys for plaintiffs Tiffany (NJ) Inc. and Tiffany and Company (collectively, "Tiffany"). I submit this Declaration in opposition to Defendant's Motion *in Limine*. I have personal knowledge of the facts set forth herein.

2. Annexed hereto as Exhibit A is a true and correct copy of the Certificate of Registration for the "bean" design mark, bearing registration number 1,804,353 on the Principal Register in the United States Patent and Trademark Office. Tiffany designated this Certificate of Registration as Plaintiffs' Exhibit 1057 in the Joint Pretrial Order.

3. Annexed hereto as Exhibit B is a true and correct copy of listings for the Elsa Peretti Mini Bean Pendant and Elsa Peretti Bean Pendant from Tiffany's official website at www.tiffany.com.

4. Annexed hereto as Exhibit C is a true and correct copy of the Certificate of Registration for the "X" design mark, bearing registration number 1,785,204 on the Principal Register in the United States Patent and Trademark Office. Tiffany designated this Certificate of Registration as Plaintiffs' Exhibit 1056 in the Joint Pretrial Order.

5. Annexed hereto as Exhibit D is a true and correct copy of listings for the Paloma Picasso X pendant, Paloma Picasso X ornament and Paloma Picasso X drop earrings from Tiffany's official website at www.tiffany.com.

6. Annexed hereto as Exhibit E is a true and correct copy of Plaintiffs' First Request for the Production of Documents and Things to Defendant eBay Inc., dated October 22, 2004.

7. Annexed hereto as Exhibit F is a true and correct copy of Plaintiffs' First Set of Interrogatories to Defendant eBay Inc., dated October 22, 2004.

8. Annexed hereto as Exhibit G is a true and correct copy of Defendant's Objections and Responses to Plaintiffs' First Request for the Production of Documents and Things, dated November 22, 2004.

9. Annexed hereto as Exhibit H is a true and correct copy of the pertinent and non-confidential excerpt from Defendant's Objections and Responses to Plaintiffs' First Set of Interrogatories, dated November 22, 2004. The excerpt is the section entitled General Objections.

10. Annexed hereto as Exhibit I is a true and correct copy of the First Request for the Production of Documents by Defendant eBay Inc., dated October 25, 2004 ("eBay's First Request").

11. During the course of discovery herein, eBay never propounded any document request or interrogatory that sought information concerning the scope of the Tiffany trademarks that Tiffany alleges in the First Amended Complaint that eBay infringed.

12. During depositions that eBay took during the course of discovery in this action, eBay never inquired about the scope of Tiffany trademarks that Tiffany alleges in the First Amended Complaint that eBay infringed.

13. Annexed hereto as Exhibit J is a true and correct copy of a schedule setting forth pertinent information from Tiffany's 2004 Buying Program, bearing bates numbers TCO 087144-A - TCO 087144-I. Tiffany produced this schedule in response to eBay's First Request, and designated it as Plaintiffs' Exhibit 434 in the Joint Pretrial Order.

14. Annexed hereto as Exhibit K is a true and correct copy of a schedule setting forth pertinent information from Tiffany's 2005 Buying Program, bearing bates numbers TCO 086511 - TCO 086521. Tiffany produced this schedule in response to eBay's First Request, and designated it as Plaintiffs' Exhibit 433 in the Joint Pretrial Order.

15. Exhibits J and K hereto collectively identify a total of 45 items purchased or selected for purchase during Tiffany's Buying Programs that included the words Atlas, Peretti, Elsa Peretti and/or Paloma Picasso in the listing title.

16. Annexed hereto as Exhibit L is a true and correct copy of a screenshot of an eBay listing for a "Tiffany Atlas Sterling Silver and Rubber Bracelet" bearing bates numbers TCO 085170 - TCO 085172. Tiffany produced this document in response to eBay's First Request.

17. Annexed hereto as Exhibit M is a true and correct copy of a screenshot of an eBay listing for a "Tiffany & Co. Paloma Picasso Loving Heart Necklace" bearing bates numbers

TCO 084782 - TCO 084788. Tiffany produced this document in response to eBay's First Request.

18. Annexed hereto as Exhibit N is a true and correct copy of a screenshot of an eBay listing for a "Tiffany & Co. Large Elsa Peretti Crucifix Necklace" bearing bates numbers TCO 085483 - TCO 085489. Tiffany produced this document in response to eBay's First Request.

19. Annexed hereto as Exhibit O are true and correct copies of pages 1 and 14 of Exhibit E to the Joint Pretrial Order, i.e., Plaintiffs' Exhibit List. Pursuant to the Court's pretrial requirements, Plaintiffs' Exhibit List sets forth the objections that eBay lodged to the trial exhibits designated by Tiffany. As reflected by the absence of any objections, eBay did not object to Plaintiffs' Exhibits 433 and 434, the Buying Program spreadsheets that are annexed hereto as Exhibits J and K.

20. Annexed hereto as Exhibit P is a true and correct copy of page 15 of Plaintiffs' Exhibit List. As reflected on this page, Tiffany designated as trial exhibits the packaging used for the items that were purchased during the two Buying Programs identified in Paragraphs 13 and 14 hereof. Those packaging materials have been designated as Plaintiffs' Exhibits 451, 452, 465, 466, 472, 473 and 474. Each of those exhibits bears what purports to be Tiffany trademarks, including the Tiffany blue.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 1, 2007

ERIK C. WALSH

CERTIFICATE OF SERVICE

I, Anthony D. Boccanfuso, the undersigned attorney at law duly admitted to practice in the State of New York, respectfully show that on the 1st day of June, 2007, the annexed **DECLARATION OF ERIK C. WALSH IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION *IN LIMINE*** was served by hand delivery upon:

Mark Fiore, Esq.
WEIL GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153

Anthony D. Boccanfuso